IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Inventor:	John E. Auer et al.
Application No.:	09/990,939
Filed:	November 17, 2001
Title:	A System for Processing and Customizing Ventilator Information
Examiner:	Sara M. Hanne
Art Unit:	2179

APPEAL BRIEF

May It Please The Honorable Board:

Appellants appeal the Final Rejection, dated April 6, 2005, of Claims 1 - 16 of the above-identified application. The fee of five hundred dollars ($500.00) for filing this Brief and any associated extension fee is to be charged to the credit card indicated on the enclosed Credit Card Authorization Form. Enclosed is a single copy of this Brief.

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09/09/2005 WABDELR1 00000025 09990939
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Appellants do not request an oral hearing.

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I. REAL PARTY IN INTEREST

The real party in interest of Application Serial No. 09/990,939 is the Assignee of record:

Draeger Medical Systems, Inc.
16 Electronics Avenue
Danvers, Massachusetts 01923

II. RELATED APPEALS AND INTERFERENCES

There are currently, and have been, no related Appeals or Interferences regarding Application Serial No. 09/990,939.

III. STATUS OF THE CLAIMS

Claims 1-16 are rejected and the rejection of claims 1 - 16 are appealed.

IV. STATUS OF AMENDMENTS

All amendments were entered and are reflected in the claims included in Appendix I.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 describes a network compatible user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays (page 2, lines 21 – 23). The system includes a display generator for generating a customization menu. The customization menu incorporates a first window including fields for user entry of items including, a label identifying a medical parameter, a value of the medical parameter and a unit of measure of the parameter (page 2, lines 23 – 26). The customization menu includes a second window having fields for user entry of values of one or more of a first predefined list of parameters (page 9, lines 5 – 14). The

display generator also generates a new image menu displays a value of the parameter identified by the user entered parameter label as well as a value of the one or more first predefined list of parameters (page 2, lines 26 – 27; page 9, lines 5 – 14). The values are derivable from user data entry via the customization menu and from network sources. The new image menu is displayable in response to user selection of a displayed icon (page 2, lines 27 – 29). An acquisition processor is provided for communicating with network sources and acquiring the medical parameter value from a network source (page 2, lines 29 – 31).

Dependent claim 2 includes all the limitations of independent claim 1, and further describes the network being at least one of (a) internet and (b) intra-net compatible (page 5, lines 5 – 15).

Dependent claim 8 includes the limitations of independent claim 1 and further describes the display generator as being an internet browser (page 7, lines 14 – 15).

Dependent claim 9 includes the limitations of independent claim 1 and further describes that the customization menu includes a first user-selectable-controller for retrieving and displaying the values of the last saved set of parameters and settings associated with a predefined listing stored in a data base (page 10, lines 28 – 33).

Independent claim 11 describes a network compatible user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays (page 2, line 34 – page 3, line 1). The system includes a display generator for generating a customization menu comprising a composite window. The composite window incorporates a first window including fields for user entry of values of

one or more of a predefined list of system parameters and a second window that includes fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter (page 3, line 1 – 10). A new image menu displays values of parameters entered by a user via the customization menu in response to user selection of a displayed icon (page 3, line 10 -11).

Independent claim 14 describes a network compatible user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays (page 2, line 34 – page 3, line 1). The system includes a display generator for generating a composite window. The composite window incorporates a first window including fields for user entry of values of one or more of a predefined list of system parameters and a second window including fields for user entry of items including, a label identifying a medical parameter, a value of the medical parameter and a unit of measure of the parameter (page 3, lines 1 – 10). A new image menu displays values of parameters entered by a user via the customization menu in response to user selection of a displayed icon (page 2, lines 26 – 29). An acquisition processor communicates with network sources and acquires the medical parameter value from a network source (page 2, line 29 – 31). The new image menu is operative to display both user-entered parameter values as well as parameter values previously acquired and stored in a data base via the processor (page 1, lines 14 – 18).

Dependent claim 16 includes the limitations of independent claim 14 and further describes that the medical parameters and settings are displayed so that changed parameters and changed settings are displayed in a different color (Figure 2B, 215; page 8, lines 25 – 34).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1 – 7 and 11 – 15 are rejected under 35 USC 102(a) as being anticipated by Biondi et al.(U.S. Patent No. 6,584,973).

Claim 8 is rejected under 35 USC 103(a) as being unpatentable over Biondi et al. (U.S. Patent No. 6,584,973) and further in view of Gavish et al. (U.S. Patent No. 6,662,032).

Claims 9, 10 and 16 are rejected under 35 USC 103(a) as being unpatentable over Biondi et al.(U.S. Patent No. 6,584,973) and further in view of Wallace et al. (U.S. Patent No. 6,369,838).

VII. ARGUMENT

Biondi et al. when taken alone or in any combination with Gavish et al. and Wallace et al. neither anticipates nor makes unpatentable the present claimed invention. Thus, reversal of the Final Rejection (hereinafter termed "rejection") of claims 1-26 under 35 U.S.C. §§ 102(a) and 103(a) is respectfully requested.

Overview of the Cited References

Biondi et al. disclose an exhalation assist device for adjusting the airway resistance in an exhalation circuit of a medical ventilator. The device includes a set of pressure, airflow and airway sensors, a controlling processor, a user interface, and a ventilatory unit in communication with a medical ventilator. Data relating to pressure within the ventilatory unit and data relating to exhalation airflow, exhalation circuit pressure and exhalation circuit resistance are provided to the controlling processor by the sensors. The controlling processor

compares measured and calculated values for airway pressure, airflow, airway resistance and applied negative pressure with desired values that have been entered by a clinician. Based on these calculations, the controlling processor transmits a signal that will change the applied negative pressure applied to the exhalation circuit by the ventilatory unit. The amount of negative pressure applied during the breathing cycle is varied by the controlling processor so that the amount of exhalation assist increases proportionately with the amount of exhalation flow and so that the amount of pressure within the patient airway remains constant at a level greater that zero and less than PEEP (See Abstract).

Gavish et al. disclose an apparatus for improving health of a user including a first sensor adapted to measure a first physiological variable which is indicative of a voluntary action of the user. A second sensor is adapted to measure a second physiological variable, which is substantially governed by an autonomic nervous system of the user. Circuitry is adapted to receive respective first and second sensor signals from the first and second sensors, and, responsive thereto, to generate an output signal which directs the user to modify a parameter of the voluntary action (See Abstract).

Wallace et al. disclose a ventilation control system for controlling the ventilation of a patient. The ventilation control system utilizes a user-friendly user interface for the display of patient data and ventilator status, as well as for entering values for ventilation settings to be used to control the ventilator (See Abstract).

Rejection of Claims 1 – 7 and 11 – 15 under 35 U.S.C. 102(a)

over Biondi et. al. (U.S. Patent 6,584,973)

Reversal of the Final Rejection (hereinafter termed "rejection") of claims 1 – 7 and 11 – 15 under 35 U.S.C. 102(b) as being anticipated by US Patent 6,584,973 issued to Biondi et al. is respectfully requested because the rejection makes crucial errors in interpreting the cited reference. The rejection erroneously states that claims 1 – 7 and 11 – 15 are anticipated by Biondi et al.

CLAIMS 1 and 3 – 7

A principle issue here is whether Biondi et al. disclose "a customization menu incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Applicant respectfully submits that these features are not shown (or suggested) by Biondi et al.

Biondi et al. describe a ventilator control system and method for controlling a ventilator pneumatic system. The user is able to choose from a desired set of values corresponding to predetermined parameters. A microprocessor then compares the chosen values with data obtained for the parameters and adjusts an amount of negative pressure to be created in a gas exchange reservoir that communicates with the patient airway. However, Biondi et al. neither disclose nor suggest "a customization menu incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter **and** a unit of measure of said parameter, **and**

a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Contrary to the assertions made in the Rejection, in Figure 7, reference number 68 (which is not specifically mentioned at all in the text of the specification) cited by the Examiner, depicts a left side of the screen including three columns – a first column including a current set value, a second column including a touch sensitive display showing an abbreviated title of the setting, and a third column including an actual value of the setting as measured during the previous breath (see Column 8, line 55-Column 9, line 3). The settings indicated in Biondi et al. **are standard preset parameters** and are NOT "fields for user entry of items" as in the present claimed invention. Nowhere in Biondi et al. is it disclosed or suggested that the setting/parameters are user entered as in the present claimed invention. The present invention, on the other hand allows for manual entry of custom parameters/settings, values of said medical parameters/settings and a unit of measure of said parameters/settings (Figure 3 and supporting text). Biondi et al. neither disclose nor suggest "a **customization menu** incorporating a first window including fields for user entry of items including, a label identifying a medical parameter" as in the present claimed invention.

Furthermore applicant respectfully submits that Advisory Action fundamentally misunderstands the present claimed invention in view of Biondi et al. Therein, the Advisory Action states that "[m]ultiple screens throughout the Biondi reference allow the user to select the control settings and monitored parameters to be displayed". In other words, Biondi et al. allow for determining what attribute will be displayed. This is not equivalent to the operation of the present claimed system wherein "a first window include[es] fields for **user entry of items**". The present invention allows a user to enter "a label identifying a medical parameter, a value of said medical parameter and a unit of

measure of said parameter". In contrast, Biondi et al., as stated in the Advisory Action calls for "selection" of items **for display**.

In support of this erroneous equivocation of Biondi et al. to the present claimed invention, the Advisory Action cites text beginning on line 23 of column 17 of Biondi et al. However, when looking to the cited portion of Biondi et al., the inherent difference between Biondi et al. and the present claimed invention is further clarified. Specifically, in lines 23 – 24 of column 17, it states that "[t]he clinician 16 can make adjustments to the list of controls to accurately **simulate** the ventilator that a hospital staff has been trained to use". This is wholly unrelated, and thus not equivalent to "a customization menu" as in the present claimed invention. The "simulation" as performed by Biondi et al. changes modes of operation to simulate **known pre-existing ventilators** and allow for behavior in certain modes to be replicated for teaching purposes (see col. 17, lines 21 – 24). The ability to adjust controls to simulate a ventilator is NOT "a first window including fields for user entry of items" nor is it "a second window including fields for user entry of values" as in the present claimed invention. Rather Biondo et al. provides the ability to rapidly select and change a plurality of settings on a ventilator simulator that are chosen by a clinician from "a programmed comprehensive therapy control structure" (see col. 17, lines 3 – 5 and 13 – 15). Thus, the cited section of Biondi et al. cannot anticipate the "user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays" as in the present claimed invention.

The Advisory Action further erroneously cites "the 'Other' button of Figure 7" which "allows the user to input other labels to be displayed on the screen" of Biondi et al. in support of the assertion that Biondi et al. support user entry items. However, in contrast, the "Other" button of Biondi et al. merely allows for the display of "other capabilities".

Line 54 in column 8 of Biondi clearly and unequivocally states that the disclosed system includes "an Others button to **display** other capabilities". Biondi et al. fails to mention or suggest another function, in the accompanying description of Figure 7 indicating the "Others" button is able to control or accomplish any other object aside from **displaying** "other capabilities". Thus, Applicant respectfully submits that Biondi et al. in Figure 7 or elsewhere neither disclose nor suggest "a customization menu incorportating a first window including fields for user entry of items including a label identifying a medical parameter" as in the present claimed invention.

Additionally, the Advisory Action cites the discussion of the "get levels" in Biondi et al. in support of manual entry of parameters and settings. However, upon complete review of Biondi et al., Applicant is unable to discern where this element of Biondi et al. is discussed or to what these "get levels" refer. No where in Biondi et al. is "get levels" discussed or even mentioned beyond its appearance in Figure 7. Any determination as to the function this button may perform (or whether or not this element is in fact a actuateable button) is the creation of the Examiner and has no 35 USC 112 enabling disclosure or support in Biondi et al. Furthermore, the assumptions made as to the functioning of this button are based on hindsight after reading the subject application.

In the continued discussion of Figure 7, Biondi et al. disclose "set values" and "actual values" in different columns on a display screen. However, neither of these features anticipate the present claimed invention for the same reasons as discussed above. Specifically, these values as disclosed by Biondi et al. do not disclose or suggest "fields for user entry of items of a medical parameter" as in the present claimed invention. Rather, the "set value" is in a column that lists values of a setting and the "actual value" displays data

as sensed from a prior breath. This is not equivalent to the system of the present claimed invention.

Furthermore, Figure 9 and the corresponding text of Biondi et al. is further cited in the Office Action as disclosing control buttons and sliders for changing the set values. The set values can be changed "in steps of approximately 1% of the allowable range, or with the 'Exact' button selected, approximately ten times more precision" (see Column 10, lines 60-63). However, the control slider shown in Figure 9 is not "a customization menu" as in the present claimed invention. Figure 9 and the accompanying text neither disclose nor suggest "a customization menu incorporating a first window including fields for user entry of items including, a label identifying a medical parameter" as in the present claimed invention. The control slider shown in Figure 9, depicts set values for a single parameter selected from the parameters shown in Figure 7 and allows for changing of the upper and lower alarm limits for the parameter. Furthermore, Biondi et al. neither disclose nor suggest that the customization window include "a second window including **fields for user entry** of values of one or more of a first predefined list of parameters" as in the present claimed invention. Biondi et al. only provide for adjustment of upper and lower alarm values for a single parameter using the control slider when that parameter is selected using the touch sensitive display shown in Figure 7.

In addition, contrary to the assertion in the Office Action, Biondi et al. neither disclose nor suggest a "new image menu for displaying a value of said parameter identified by said user entered parameter label, and a value of the one or more of the first predefined list of parameters" as in the present claimed invention. Rather, the "accept changes" button shown in Figure 9 sets the upper and lower alarm values for a selected parameter to the new desired value and the "save" button shown in Figure 7 records current parameter

settings. Furthermore, Biondi et al. neither disclose nor suggest "displaying a value of said parameter identified by said user entered parameter label and a value of the one or more of the first predefined list of parameters, said values being derivable from user data entry via said **customization menu** and from network sources" as in the present claimed invention. Rather, Figure 1, ref. 10, 12 of Biondi et al., cited in the Office Action, disclose a ventilator control system including a display controller. The ventilator control system "controls a ventilator pneumatic system in a medical ventilator" (Col. 3, line 46-48). System adjustment in Biondi et al. is achieved "by manipulating a plurality of controls on the input device of the display controller." The display controller also displays data received from the sensor monitoring system. Therefore, Biondi et al. neither disclose nor suggest "displaying a value of said parameter identified by said user entered parameter label and a value of the one or more of the first predefined list of parameters, said values being derivable from user data entry via said **customization menu** and from network sources" as in the present claimed invention. Specifically, the selection of settings via the manipulation of controls of an input device as disclosed by Biondi et al. is NOT "user data entry via said customization menu" as in the present claimed invention.

Furthermore, as Biondi et al. neither disclose nor suggest "a customization menu...including fields for user entry of items" as claimed in claim 1 of the present invention, Biondi et al. cannot disclose "a new image menu for displaying a value of said parameter identified by said user entered parameter label and a value of one of the one or more of the first predefined list of parameters, **said values being derivable from user data entry via said customization menu** and from network sources" as in the present claimed invention. Because Biondi et al. does not allow for users to enter data "including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of

said parameter" as in the present invention, Biondi et al. cannot display "values **derivable** from user data entry" as in the present claimed invention.

Applicant respectfully submits that Biondi et al. contains no 35 USC 112 compliant enabling disclosure that anticipates the present invention as claimed in claim 1. As claims 3 – 7 are dependent on independent claim 1, Applicant respectfully submits that claims 3 – 7 are patentable for the same reasons as discussed above regarding claim 1. Therefore, it is further respectfully submitted that Biondi et al. cannot anticipate the present invention as claimed in claims 3 -7.

CLAIM 2

Dependent claim 2 is considered patentable for the same reasons discussed above with respect to claim 1. Claim 2 is also considered patentable because Biondi et al. also neither disclose nor suggest "said network is at least one of (a) internet and (b) intra-net compatible" as in claim 2 of the present invention. The system in Biondi et al. is a closed system. Specifically, there is no mention in Figure 1 (as cited by the Office Action) or throughout the corresponding description, or in the description of other Figures, that the ventilator of Biondi is anything but a stand-alone device able to be used by a clinician at a patients bedside. Thus, there is no suggestion or disclosure of the system being compatible with a network, internet or intra-net. Thus, Applicant respectfully submits that claim 2 is not anticipated by Biondi et al.

CLAIMS 11 - 13

Independent claim 11 includes limitations similar to those of claim 1 and thus the arguments presented above regarding independent claim 1 are applicable to independent claim 11. Specifically, Biondi et al. neither disclose nor suggest "a customization menu

comprising a composite window incorporating...a second window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Contrary to the assertions made in the Rejection, in Figure 7, reference number 68 (which is not mentioned at all in the text of the specification) cited by the Examiner, depicts a left side of the screen including three columns – a first column including a current set value, a second column including a touch sensitive display showing an abbreviated title of the setting, and a third column including an actual value of the setting as measured during the previous breath (see Column 8, line 55-Column 9, line 3). The settings indicated in Biondi et al. **are standard preset parameters** and are NOT "fields for user entry of items" displayed in a customization menu of a "user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays" as described in the present claimed invention. Nowhere in Biondi et al. is it disclosed or suggested that the setting/parameters are user entered as in the present claimed invention. The present invention, on the other hand allows for manual entry of custom parameters/settings, values of said medical parameters/settings and a unit of measure of said parameters/settings (Figure 3 and supporting text). Biondi et al. neither disclose nor suggest "a **customization menu** comprising a composite window incorporating...a second window including fields for user entry of items including, a label identifying a medical parameter" as in the present claimed invention.

Furthermore applicant respectfully submits that Advisory Action fundamentally misunderstands the present claimed invention in view of Biondi et al. Therein, the Advisory Action states that "[m]ultiple screens throughout the Biondi reference allow the user to select the control settings and monitored parameters to be displayed". In other

words, Biondi et al. allow for determining what attribute will be displayed. This is not equivalent to the operation of the present claimed system wherein "a second window include[es] fields for **user entry of items**". The present invention allows a user to enter "a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter". In contrast, Biondi et al., as stated in the Advisory Action calls for "selection" of items **for display**.

In support of the erroneous assertion that Biondi et al. anticipates the claimed invention, the Advisory Action cites text beginning on line 23 of column 17 of Biondi et al. However, when looking to the cited portion of Biondi et al., the inherent difference between Biondi et al. and the present claimed invention is further clarified. Specifically, in lines 23 – 24 of column 17, it clearly states that "[t]he clinician 16 can make adjustments to the list of controls to accurately **simulate** the ventilator that a hospital staff has been trained to use". This is wholly unrelated, and thus not equivalent to "a customization menu" as in the present claimed invention. The "simulation" as performed by Biondi et al. changes modes of operation to simulate **known pre-existing ventilators** and allow for behavior in certain modes to be replicated for teaching purposes. The ability to adjust controls to simulate a ventilator is NOT "a second window including fields for user entry of items" nor is it "a second window including fields for user entry of values" as in the present claimed invention. Thus, the cited section of Biondi et al. cannot anticipate the "user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays" as in the present claimed invention.

The Advisory Action further erroneously cites "the 'Other' button of Figure 7" which "allows the user to input other labels to be displayed on the screen" of Biondi et al. in support of the assertion that Biondi et al. enables "fields for user entry of items" as in the

present claimed invention. However, in contrast, the "Other" button of Biondi et al. merely allows for the display of "other capabilities". Line 54 in column 8 of Biondi unambiguously states that the disclosed system includes "an Others button to **display** other capabilities". Biondi et al. fails to suggest any other function, in the accompanying description of Figure 7 that could indicate the "Others" button is able to control or accomplish any other object aside from **displaying** "other capabilities". Thus, Applicant respectfully submits that Biondi et al. in Figure 7 or elsewhere neither disclose nor suggest "a customization menu incorporating a first window including fields for user entry of items including a label identifying a medical parameter" as in the present claimed invention.

Additionally, the Advisory Action cites the discussion of the "get levels" in Biondi et al. in support of manual entry of parameters and settings. However, upon complete review of Biondi et al., Applicant is unable to discern where this element of Biondi et al. is discussed or to what these "get levels" refer. Nowhere in Biondi et al. is "get levels" discussed or even mentioned beyond its appearance in Figure 7. Any determination as to the function this button may perform is pure speculation on the part of the Examiner and has no 35 USC 112 enabling disclosure foundation in Biondi et al.

In the continued discussion of Figure 7, Biondi et al. disclose "set values" and "actual values" in different columns on a display screen. However, neither of these features anticipate the present claimed invention for the same reasons as discussed above. Specifically, these features do not disclose or suggest "fields for user entry of items of a medical parameter" as in the present claimed invention. Rather, the "set value" is in a column that lists values of a setting and the "actual value" displays data as sensed via a sensor representing a prior breath taken by a patient. This is not equivalent to the system of the present claimed invention.

Furthermore, Figure 9 and the corresponding text of Biondi et al. is further cited in the Office Action as disclosing control buttons and sliders for changing the set values. The set values can be changed "in steps of approximately 1% of the allowable range, or with the 'Exact' button selected, approximately ten times more precision" (see Column 10, lines 60-63). However, the control slider shown in Figure 9 is not "a customization menu" as in the present claimed invention. Specifically, Figure 9 and the accompanying text neither disclose nor suggest "a customization menu comprising a composite window incorporating...a second window including fields for user entry of items including, a label identifying a medical parameter" as in the present claimed invention. The control slider shown in Figure 9, depicts set values for a single parameter selected from the parameters shown in Figure 7 and allows for changing of the upper and lower alarm limits for the parameter. Furthermore, Biondi et al. neither disclose nor suggest that the customization window include "a first window including **fields for user entry** of values of one or more of a first predefined list of parameters" as in the present claimed invention. Biondi et al. only provide for adjustment of upper and lower alarm values for a single parameter using the control slider when that parameter is selected using the touch sensitive display shown in Figure 7.

In addition, contrary to the assertion in the Office Action, Biondi et al. neither disclose nor suggest a "new image menu for displaying values of parameters entered a user via said customization menu" as in the present claimed invention. Rather, the "accept changes" button shown in Figure 9 sets the upper and lower alarm values for a selected parameter to the new desired value and the "save" button shown in Figure 7 records current parameter settings. Figure 1, ref. 10, 12 of Biondi et al., cited in the Office Action, disclose a ventilator control system including a display controller. The ventilator control system

"controls a ventilator pneumatic system in a medical ventilator" (Col. 3, line 46-48). System adjustment in Biondi et al. is achieved "by manipulating a plurality of controls on the input device of the display controller" The display controller also displays data received from the sensor monitoring system. Therefore, Biondi et al. neither disclose nor suggest "displaying values of parameters entered a user via said customization menu" as in the present claimed invention.

Biondi et al. contains no 35 USC 112 compliant enabling disclosure of a system that anticipates the present invention as claimed in claim 11. As claims 12 and 13 dependent on independent claim 11, Applicant respectfully submits that claims 12 and 13 patentable for the same reasons as discussed above regarding claim 11. Therefore, it is further respectfully submitted that Biondi et al. cannot anticipate the present invention as claimed in claims 12 and 13.

CLAIMS 14 and 15

Independent claim 14 includes limitations similar to those of claim 1 and thus the arguments presented above regarding independent claim 1 are applicable to independent claim 14. Specifically, Biondi et al. neither disclose nor suggest "a display generator for generating a composite window incorporating...a second window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Contrary to the assertions made in the Rejection, in Figure 7, reference number 68 (which is not specifically mentioned at all in the text of the specification) cited by the Examiner, depicts a left side of the screen including three columns – a first column including a current set value, a second column including a touch

sensitive display showing an abbreviated title of the setting, and a third column including an actual value of the setting as measured during the previous breath (see Column 8, line 55-Column 9, line 3). The settings indicated in Biondi et al. **are standard preset parameters** (see col. 11, lines 10 – 66) and are NOT "fields for user entry of items" as described in the present claimed invention. Nowhere in Biondi et al. is it disclosed or suggested that the setting/parameters are user entered via a "customization menu" as in the present claimed invention. The present invention, on the other hand allows for manual entry of custom parameters/settings, values of said medical parameters/settings and a unit of measure of said parameters/settings (Figure 3 and supporting text). Biondi et al. neither disclose nor suggest "a display generator for generating a composite window incorporating...a second window including fields for user entry of items including, a label identifying a medical parameter" as in the present claimed invention. The composite window allows a user to customize the items entered which are later displayed.

Furthermore applicant respectfully submits that Advisory Action fundamentally misunderstands the present claimed invention in view of Biondi et al. Therein, the Advisory Action states that "[m]ultiple screens throughout the Biondi reference allow the user to select the control settings and monitored parameters to be displayed". In other words, Biondi et al. allow for determining what attribute will be displayed. This is not equivalent to the operation of the present claimed system wherein "a second window include[es] fields for **user entry of items**". The present invention allows a user to enter "a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter". In contrast, Biondi et al., as stated in the Advisory Action calls for "selection" of items **for display**.

In support of the erroneous assertion that Biondi et al. anticipates the claimed invention, the Advisory Action cites text beginning on line 23 of column 17 of Biondi et al. However, when looking to the cited portion of Biondi et al., the inherent difference between Biondi et al. and the present claimed invention is further clarified. Specifically, in lines 23 – 24 of column 17, it clearly states that "[t]he clinician 16 can make adjustments to the list of controls to accurately **simulate** the ventilator that a hospital staff has been trained to use". This is wholly unrelated, and thus not equivalent to "a customization menu" as in the present claimed invention. The "simulation" as performed by Biondi et al. changes modes of operation to simulate **known pre-existing ventilators** and allow for behavior in certain modes to be replicated for teaching purposes. The ability to adjust controls to simulate a ventilator is NOT "a second window including fields for user entry of items" nor is it "a second window including fields for user entry of values" as in the present claimed invention. Thus, the cited section of Biondi et al. cannot anticipate the "user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays" as in the present claimed invention.

The Advisory Action further erroneously cites "the 'Other' button of Figure 7" which "allows the user to input other labels to be displayed on the screen" of Biondi et al. in support of the assertion that Biondi et al. support user entry items. However, in contrast, the "Other" button of Biondi et al. merely allows for the display of "other capabilities". Line 54 in column 8 of Biondi unambiguously states that the disclosed system includes an Others button to **display** other capabilities". Biondi et al. fails to suggest any other function, in the accompanying description of Figure 7 indicating the "Others" button is able to control or accomplish any other object aside from **displaying** "other capabilities". Thus, Applicant respectfully submits that Biondi et al. in Figure 7 or elsewhere neither disclose nor suggest "a display generator for generating a composite window

incorporating...a second window including fields for user entry of items including a label identifying a medical parameter" as in the present claimed invention.

Additionally, the Advisory Action cites the discussion of the "get levels" in Biondi et al. in support of manual entry of parameters and settings. However, upon complete review of Biondi et al., Applicant is unable to discern where this element of Biondi et al. is discussed or to what these "get levels" refer. No where in Biondi et al. is "get levels" discussed or even mentioned beyond its appearance in Figure 7. Any determination as to the function this button may perform is speculation on the part of the Examiner and has no 35 USC 112 enabling disclosure foundation in Biondi et al. Furthermore, the assumptions made as to the functioning of this button are clearly based on hindsight after reading the subject application.

In the continued discussion of Figure 7, Biondi et al. disclose "set values" and "actual values" in different columns on a display screen. However, neither of these features anticipate the present claimed invention for the same reasons as discussed above. Specifically, they do not disclose or suggest "fields for user entry of items of a medical parameter" as in the present claimed invention. Rather, the "set value" is in a column that lists values of a setting and the "actual value" displays data as sensed from a prior breath. This is not equivalent to the system of the present claimed invention.

Furthermore, Figure 9 and the corresponding text of Biondi et al. is further cited in the Office Action as disclosing control buttons and sliders for changing the set values. The set values can be changed "in steps of approximately 1% of the allowable range, or with the 'Exact' button selected, approximately ten times more precision" (see Column 10, lines 60-63). However, the control slider shown in Figure 9 is not "a customization menu" as in the

present claimed invention. Figure 9 and the accompanying text neither disclose nor suggest "a display generator for generating a composite window incorporating...a second window including fields for user entry of items including, a label identifying a medical parameter" as in the present claimed invention. The control slider shown in Figure 9, depicts set values for a single parameter selected from the parameters shown in Figure 7 and allows for changing of the upper and lower alarm limits for the parameter. Furthermore, Biondi et al. neither disclose nor suggest that the customization window include "a first window including **fields for user entry** of values of one or more of a first predefined list of parameters" as in the present claimed invention. Biondi et al. only provide for adjustment of upper and lower alarm values for a single parameter using the control slider when that parameter is selected using the touch sensitive display shown in Figure 7.

In addition, contrary to the assertion in the Office Action, Biondi et al. neither disclose nor suggest a "new image menu for displaying values of parameters entered a user via said customization menu" as in the present claimed invention. Rather, the "accept changes" button shown in Figure 9 sets the upper and lower alarm values for a selected parameter to the new desired value and the "save" button shown in Figure 7 records current parameter settings. Figure 1, ref. 10, 12 of Biondi et al., cited in the Office Action, disclose a ventilator control system including a display controller. The ventilator control system "controls a ventilator pneumatic system in a medical ventilator" (Col. 3, line 46-48). System adjustment in Biondi et al. is achieved "by manipulating a plurality of controls on the input device of the display controller." The display controller also displays data received from the sensor monitoring system. Therefore, Biondi et al. neither disclose nor suggest "displaying values of parameters entered a user via said customization menu" as in the present claimed invention.

Furthermore, as Biondi et al. fails to disclose or suggest the ability to accept "user entered" parameters and/or settings, Biondi et al. also neither discloses nor suggests "said new image menu is operative to display both user entered parameters as well as parameter values previously acquired" as in the present claimed invention.

Biondi et al. contains no 35 USC 112 compliant enabling disclosure that anticipates the present invention as claimed in claim 14. As claim 15 is dependent on independent claim 14, Applicant respectfully submits that claim 15 patentable for the same reasons as discussed above regarding claim 14. Therefore, it is further respectfully submitted that Biondi et al. cannot anticipate the present invention as claimed in claim 15.

In view of the above remarks, it is respectfully submitted that there is no 35 USC 112 enabling disclosure in Biondi et al. that makes the present claimed invention unpatentable. As independent claims 1, 11 and 14 each include limitations similar to those discussed above, all arguments presented above are applicable to each of these claims. Thus, in view of the above remarks, it is respectfully submitted that claims 1, 11 and 14 are not anticipated by Biondi et al. As claims 2-7, 12, 13 and 15 are dependent on claims 1, 11 and 14, respectively, it is respectfully submitted that these claims are also not anticipated by Biondi et al. It is thus further respectfully submitted that this rejection is satisfied and should be withdrawn.

Rejection of Claim 8 under 35 USC 103(a) over

over Biondi et. al. (U.S. Patent 6,584,973) in view of Gavish (U.S. 6,662,032)

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent U.S. Patent 6,584,973 issued to Biondi et. al. (U.S. Patent 6,584,973) in view of U.S. Patent

6,662,032 issued to Gavish et al. Claim 8 is considered patentable for reasons given in connection with claim 1 and for the following reasons.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed.Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (CCPA 1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion, or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. *Uniroya, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed.Cir. 1988), *cert. denied*, 488 U.S. 825 (1988); *Ashland Oil Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 28, 293, 227 USPQ 657, 664 (Fed.Cir. 1985), *cert. denied,* 475 U.S. 1017 (1986); *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed.Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992).

CLAIM 8

Claim 8 is dependent on claim 1 and thus all arguments presented above with respect to claim 1 are also applicable to claim 8. Claim 8 is further considered patentable for the following reasons.

Gavish et al. disclose a diagnostic device. The device includes first and second sensors for monitoring physiological variables. The first physiological variable being

indicative of a voluntary action of the user. Circuitry is provided to receive signals from the first and second sensors and, responsive thereto, generate an output signal directing the user to modify a parameter of the voluntary action. Gavish et al. were cited to show use of an internet browser to obtain an internet accessing interface for controlling the editing of medical parameters. However, contrary to the assertion made in the rejection, Gavish et al. neither disclose nor suggest the "display generator is an internet browser" as claimed in claim 8 of the present invention. Specifically, Column 4, lines 9-21 of Gavish et al. merely show that analysis by the program operator may be difficult/impossible to perform at the local site and therefore there may be a "direct response to the user, or a communication between computing devices." Further, column 29, lines 59-66 of Gavish et al. disclose the "device accesses through the Internet a Web page maintained by the server, and displays on a screen recommendations which are generated by the server or by a case manager who intermittently reviews data sent by device to the server." These passages are concerned with communication between computing devices, namely the device and the server. In fact, nowhere in these passages does Gavish et al. teach that the "display generator is an internet browser" "for generating, a **customization menu** incorporating a first window including fields **for user entry of items** including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Consequently, Gavish et al. teach a system for providing recommendations regarding the health of the user. Additionally, contrary to the assertion of both the Final Rejection and the Advisory Action, Gavish et al. do NOT teach the "display generator is an internet browser" "for generating, a **customization menu** incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of

values of one or more of a first predefined list of parameters" as in the present claimed invention.

Additionally, Gavish et al., similarly to Biondi et al., neither disclose nor suggest "a customization menu incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention.

Furthermore, the combination of Gavish et al with Biondi et al. as suggested in the Rejection will not produce the present claimed invention. The combination of Gavish et al. with Biondi et al. results in a system that provides recommendations regarding the airway pressure within the patient. This combination neither discloses nor suggests a system including "a customization menu incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Additionally, this combination neither discloses nor suggests that the "display generator is an internet browser" "for generating, a **customization menu** incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in claim 8 of the present invention.

In view of the above remarks, it is respectfully submitted that there is no 35 USC 112 enabling disclosure in either Biondi et al. or Gavish et al., alone or in combination that makes the present claimed invention unpatentable. Consequently withdrawal of the Rejection of Claim 8 under 35 USC 103(a) is respectfully requested.

Rejection of Claims 9, 10 and 16 under 35 USC 103(a) over over Biondi et. al. (U.S. Patent 6,584,973) in view of Wallace (U.S. 6,369,838)

Claims 9, 10 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,584,973 issued to Biondi et. al. in view of U.S. Patent 6,369,838 issued to Wallace et al. Claims 9 and 10 are considered patentable for reasons given in connection with claim 1 and claim 16 is considered patentable for the reasons given above in connection with claim 14. Claims 9, 10 and 16 are also considered patentable for the following reasons.

CLAIM 9 and 10

Claims 9 and 10 are dependent on independent claim 1 and thus are considered patentable for the reasons presented above regarding claim. Claims 9 and 10 are also considered patentable for the following reasons.

Wallace et al. disclose a user interface for monitoring and controlling the breathing of a patient. The interface provides a display of ventilation parameters. The ventilator operates based upon a predetermined set of ventilator control settings. Entry of parameters are permitted within the preset ranges whereby alarms indicate the entry of invalid parameters. (col. 3, lines 51 – 67). Alarm limits may also be adjusted by the user. However, Wallace et al., similarly to Biondi et al., neither disclose nor suggest "a

customization menu incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Additionally, Wallace et al., similarly to Biondi et al., neither disclose nor suggest a "new image menu being displayable in response to user selection of a displayed icon" as in the present claimed invention.

It is also further respectfully submitted that there is no reason or motivation to combine Biondi et al. with Wallace et al. Biondi et al. disclose a ventilator control system and method for controlling a ventilator pneumatic system. Wallace et al. disclose a ventilator control system with a user-friendly user interface for the display of patient data, ventilator status and ventilator setting entry. Biondi et al. and Wallace et al. relate to different aspects of ventilation systems and thus it is respectfully submitted that the combination of these references to produce the present claimed invention would not be obvious. Biondi et al. deals with keeping the amount of pressure within a patient airway at a constant desired level (see Abstract). Wallace et al., on the other hand, describes a user friendly user interface for a ventilation control system. (see Abstract)

Even if there was a reason or motivation to combine these two references, the combination of the system disclosed by Biondi et al. with the system disclosed by Wallace et al. as suggested in the Rejection results in a system having a user friendly interface for keeping constant the amount of pressure within a patient airway. The combination of Biondi et al. and Wallace et al. neither disclose nor suggest "a customization menu incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of

said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Nor does the combination of Biondi et al. and Wallace et al. disclose or suggest "new image menu being displayable in response to user selection of a displayed icon" as in the present claimed invention.

As claim 10 is dependent on claim 9, Applicant respectfully submits that claim 10 is patentable for the same reasons as discussed above regarding claim 9. Furthermore, as claims 9 and 10 are dependent on independent claim 1, claims 9 and 10 are patentable for the same reasons as discussed above regarding claim 1. Thus, Wallace et al. alone or in combination with Biondi et al. contains no 35 USC 112 compliant enabling disclosure that would make the present invention as claimed in claims 1, 9 or 10 unpatentable.

CLAIM 16

Applicant respectfully submits that on page 6 of the Final Rejection, therein it states that "they (Biondi et al.) fail to show...displaying changed parameters and setting in a different color". However, the Advisory Action includes a statement that is directly contrary to the initial (and correct) reading of Biondi et al. regarding the use of color for displaying changed parameters.

However, contrary to the Rejection, Wallace et al. (with Biondi et al.) also neither disclose nor suggest the aforementioned features found in claims 16 of the present invention. The passage at Column 13, line 62 et seq. of Wallace et al., cited in the Office Action, disclose that a user may select a parameter to change by touching an on-screen button. To indicate that the particular button is depressed, the button may change color. This is unlike the present invention as claimed in claim 16, wherein "changed parameters

and changed settings are displayed in different colors". In Wallace et al. a change in color indicates a depressed button as opposed to the present claimed invention which indicates a parameter change with a change of color.

It is also respectfully submitted that there is no reason or motivation in either Biondi et al. or Wallace et al. to identify a changed parameter settings by color indication. While Wallace et al. does suggest the use of color, changing the color of a button when it has been depressed is not the same as changing the color of a parameter when the parameter has been changed.

It is also further respectfully submitted that there is no reason or motivation to combine Biondi et al. with Wallace et al. Biondi et al. disclose a ventilator control system and method for controlling a ventilator pneumatic system. Wallace et al. disclose a ventilator control system with a user-friendly user interface for the display of patient data, ventilator status and ventilator setting entry. Biondi et al. and Wallace et al. relate to different aspects of ventilation systems and thus it is respectfully submitted that the combination of these references to produce the present claimed invention would not be obvious. Biondi et al. deals with keeping the amount of pressure within a patient airway at a constant desired level. Wallace et al., on the other hand, describes a user friendly user interface for a ventilation control system.

Even if there was a reason or motivation to combine these two references, the combination of the system disclosed by Biondi et al. with the system disclosed by Wallace et al. as suggested in the Rejection results in a system having a user friendly interface for keeping constant the amount of pressure within a patient airway. The combination of Biondi et al. and Wallace et al. neither disclose nor suggest "a customization menu

incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Nor does the combination of Biondi et al. and Wallace et al. neither disclose nor suggest identifying "changed parameters and changed settings are displayed in different colors" as in the present claimed invention.

As claim 16 is dependent independent claim 14, claim 16 is patentable for the same reasons as discussed above regarding claim 14. Thus, Wallace et al. alone or in combination with Biondi et al. contains no 35 USC 112 compliant enabling disclosure that would make the present invention as claimed in claims 14 or 16 unpatentable.

In view of the above remarks, it is respectfully submitted that there is no 35 USC 112 enabling disclosure in either Biondi et al. or Wallace et al., when taken alone or in combination, that makes the present claimed invention unpatentable. Consequently, withdrawal of the Rejection of Claims 9, 10 and 16 under 35 USC 103(a) is respectfully requested.

VIII CONCLUSION

Neither Biondi et al., Gavish et al. nor Wallace et al. alone or in combination with one another disclose "a customization menu incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters" as in the present claimed invention. Additionally, Neither Biondi et al., Gavish et al. nor

Wallace et al. alone or in combination with one another disclose or suggest "a new image menu for displaying a value of said parameter identified by said user entered parameter label, and a value of the one or more of the first predefined list of parameters, said values being derivable from user data entry via said customization menu and from network sources" as in the present claimed invention.

Accordingly it is respectfully submitted that the rejection of Claims 1– 16 should be reversed.

Respectfully submitted,
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APPENDIX I - APPEALED CLAIMS

1. (Previously Presented) A network compatible configurable user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays, comprising:

a display generator for generating,

a customization menu incorporating a first window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and a second window including fields for user entry of values of one or more of a first predefined list of parameters;

a new image menu for displaying a value of said parameter identified by said user entered parameter label, and a value of the one or more of the first predefined list of parameters, said values being derivable from user data entry via said customization menu and from network sources, said new image menu being displayable in response to user selection of a displayed icon; and

an acquisition processor for communicating with network sources and acquiring said medical parameter value from a network source.

2. (Original) The system of claim 1, wherein said network is at least one of (a) internet and (b) intra-net compatible.

3. (Original) The system of claim 1, wherein a previously stored parameter value is retrieved for display in said new image menu.

4. (Original) The system of claim 1, wherein said medical parameter comprises a parameter or device setting associated with a ventilation function.

5. (Previously Presented) The system of claim 1, wherein said customization menu includes a third window permitting user entry of values for one or more of a second predefined list of parameters.

6. (Previously Presented) The system of claim 5, wherein said first predefined list includes ventilation parameters and settings.

7. (Previously Presented) The system of claim 5, wherein said second predefined list further includes blood gas parameters.

8. (Original) The system of claim 1, wherein said display generator is an internet browser.

9. (Original) The system of claim 1, wherein said customization menu includes a first user-selectable-controller for retrieving and displaying the values of the last saved set of parameters and settings associated with a predefined listing stored in a data base.

10. (Original) The system of claim 9, wherein said customization menu further includes a-second-user-selectable controller for storing newly entered values associated with said predefined listing of parameters and settings.

11. (Original) A network compatible user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays, comprising:

a display generator for generating,

a customization menu comprising a composite window incorporating,

a first window including fields for user entry of values of one or more of a predefined list of system parameters; and

a second window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and

a new image menu for displaying values of parameters entered by a user via said customization menu in response to user selection of a displayed icon.

12. (Original) The system of claim 11, wherein said predefined list of parameters comprises parameters associated with one of (a) ventilation function and ventilation device settings and (b) blood gas characteristics.

13. (Original) The system of claim 11, further including an acquisition processor for communicating with network sources and acquiring a customization menu defined parameter from a network source.

14. (Original) A network compatible user interface system for displaying patient medical parameters and supporting user customization of medical parameter image displays, comprising:

a display generator for generating a composite window incorporating,

a first window including fields for user entry ,of values; of one or more of a predefined list of system parameters; and

a second window including fields for user entry of items including, a label identifying a medical parameter, a value of said medical parameter and a unit of measure of said parameter, and

a new image menu for displaying values of parameters entered by a user via said customization menu in response to user selection of a displayed icon; and

an acquisition processor for communicating with network sources and acquiring said medical parameter value from a network source, wherein said new image menu is operative to display both user-entered parameter values as well as parameter values previously acquired and stored in a data base via said processor.

15. (Original) The system of claim 14, wherein said medical parameter comprises a parameter or device setting associated with a ventilation function.

16. (Original) The system of claim 14, wherein said medical parameters and settings are displayed so that changed parameters and changed settings are displayed in a different color.

APPENDIX II - EVIDENCE

Applicant does not rely on any additional evidence other than the arguments submitted hereinabove.

APPENDIX III - RELATED PROCEEDINGS

Applicant respectfully submits that there are no proceedings related to this appeal in which any decisions were rendered.

APPENDIX IV - TABLE OF CASES

1. *In re Howard*, 394 F. 2d 869, 157 USPQ 615, 616 (CCPA 1968)
2. 29 AM. Jur 2D Evidence S. 33 (1994)
3. *In re Ahlert*, 424 F. 2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970)
4. *In re Eynde*, 480 F. 2d 1364, 1370; 178 USPQ 470, 474 (CCPA 1973)

APPENDIX V - LIST OF REFERENCES

U.S. Pat. No.	Issued Date	102(e) Date	Inventors
6,584,973	July 1, 2003		Biondi et al.
6,662,032	December 9, 2003		Gavish et al.
6,369,838	April 9, 2002		Wallace et al.

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PTO/SB/17 (12-04v2)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number

AF
RFW

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act (H.R. 4818).

FEE TRANSMITTAL
For FY 2005

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	($)	$500.00

Complete if Known	
Application Number	09/990,939
Filing Date	November 17, 2001
First Named Inventor	John E. Auer
Examiner Name	Sara M. Hanne
Art Unit	2179
Attorney Docket No.	2000P09060US

METHOD OF PAYMENT (check all that apply)

☐ Check ☑ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☑ Deposit Account Deposit Account Number: 50-2828 Deposit Account Name: Jack Schwartz

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, **except for the filing fee**

☑ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☑ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
		Small Entity		Small Entity		Small Entity	
Application Type	Fee ($)	Fee ($)	Fee ($)	Fee ($)	Fee ($)	Fee ($)	Fees Paid ($)
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 20 or HP =	_____	x _____	= _____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 3 or HP =	_____	x _____	= _____

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims	
Fee ($)	Fee Paid ($)
_____	_____

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee ($)	Fee Paid ($)
_____ - 100 =	_____	/ 50 = _____ (round **up** to a whole number)	x _____	= _____

4. OTHER FEE(S)

	Fees Paid ($)
Non-English Specification, $130 fee (no small entity discount)	
Other (e.g., late filing surcharge): Appeal Brief	$500.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 34,721	Telephone 212-971-0416
Name (Print/Type)	Jack Schwartz		Date September 6, 2005